

Sophia S. Lau, Esq., Nevada Bar No. 13365
slau@earlysullivan.com
EARLY SULLIVAN WRIGHT
GIZER & McRAE LLP
601 South Seventh Street, 2nd Floor
Las Vegas, NV 89101
Telephone: (702) 331-7593
Facsimile: (702) 331-1652

Attorneys for Third-Party Defendants
COMMONWEALTH LAND TITLE INSURANCE
COMPANY AND LAWYERS TITLE OF NEVADA, INC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST
2005-56, MORTGAGE PASSTHROUGH
CERTIFICATES, SERIES 2005-56.

Plaintiff,

vs.

CHRISTOPHER COMMUNITIES AT SOUTHERN HIGHLANDS GOLF CLUB HOMEOWNERS ASSOCIATION; KUPPERLIN LAW GROUP, LLC; FIRST 100, LLC; ALAN LAHRS AND THERESA LAHRS AS TRUSTEES OF THE LAHRS FAMILY TRUST; DOB INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS -X, inclusive,

Defendants.

CHRISTOPHER COMMUNITIES AT SOUTHERN HIGHLANDS GOLF CLUB HOMEOWNERS ASSOCIATION.

Cross-Complainant,

vs.

KUPPERLIN LAW GROUP, LLC,

Cross-Defendant.

Case No.: 2:17-cv-01033-JCM-GWF

**EX PARTE MOTION OF THIRD-PARTY DEFENDANTS
COMMONWEALTH LAND TITLE
INSURANCE COMPANY AND
LAWYERS TITLE OF NEVADA FOR
AN EXTENSION OF TIME TO
RESPOND TO THIRD-PARTY
PLAINTIFFS ALAN AND THERESA
LAHRS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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2
3 CHRISTOPHER COMMUNITIES AT
4 SOUTHERN HIGHLANDS GOLF CLUB
5 HOMEOWNERS ASSOCIATION,

6 Cross-Complainant,

7 vs.

8 KUPPERLIN LAW GROUP, LLC,

9 Cross-Defendants.

10 KUPPERLIN LAW GROUP, LLC,

11 Counter-claimant,

12 vs.

13 NATALIE L. WINSLOW, an individual,

14 Counter-defendant.

15
16 ALAN LAHRS AND THERESA LAHRS
17 AS TRUSTEES OF THE LAHRS FAMILY
18 TRUST, a trust established under the laws
of the State of Nevada,

19 Cross-Complainant,

20 vs.

21 CHRISTOPHER COMMUNITIES AT
22 SOUTHERN HIGHLANDS GOLF CLUB
23 HOMEOWNERS ASSOCIATION, a
24 homeowner's association governed by the
laws of the State of Nevada; KUPPERLIN
25 LAW GROUP, LLC, a Nevada limited
liability company; FIRST 100, LLC, a
26 Nevada limited liability company,

27 Cross-Defendants.

28 ALAN LAHRS AND THERESA LAHRS
AS TRUSTEES OF THE LAHRS FAMILY
TRUST, a trust established under the laws
of the State of Nevada,

Third-Party Plaintiff,

vs.

JAY BLOOM, an individual, DOE INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Third-Party Defendants.

ALAN LAHRS and THERESA LAHRS,
individually and as Trustees for their Family
Trust.

Third-Party Plaintiffs,

VS.

COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Foreign Corporation previously registered with the Nevada Secretary of State's Office; LAWYERS TITLE OF NEVADA, Inc., a Nevada Domestic Corporation; DOE individuals I-V; and ROE CORPORATIONS I-V,

Supplemental Third-Party Defendants.

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 6(b)(1) and Local Rules IA 6-1 and 6-2, third-party defendants Commonwealth Land Title Insurance Company (“Commonwealth”) and Lawyers Title of Nevada, Inc. (“Lawyers Title”) (collectively “Defendants”), by and through their undersigned counsel of record from Early Sullivan Wright Gizer & McRae LLP, will and hereby do move the Court, on an *ex parte* basis, for an order extending Defendants’ time to respond to the Motion for Partial Summary Judgment (“MPSJ”) filed by third-party plaintiffs Alan and Theresa Lahrs’ (collectively “Plaintiffs” or the “Lahrs”) on **February 21, 2019**. [ECF No. 127]. Defendants’ Response to the MPSJ is currently due on **March 14, 2019**. [ECF No. 127].

1 As set forth herein, Defendants were only recently added to this litigation after the Lahrs
2 obtained permission from the Court (in December 2018) to file a Supplemental Third-Party
3 Complaint against Commonwealth and Lawyers Title. [ECF No. 113]. Commonwealth and
4 Lawyers Title filed an Answer to the Lahrs' Third Party Complaint only one month ago, i.e., on
5 **February 1, 2019**. [ECF No. 122]. The Lahrs filed their Motion for Partial Summary Judgment
6 just 20 days later, on **February 21, 2019**. [ECF 127]. Defendants have not had, and will not have,
7 an adequate opportunity to conduct discovery before Defendants' Response to the MPSJ must be
8 filed on **March 14, 2019**. Defendants and the Lahrs have not held a Rule 26 meeting and have not
9 made any initial disclosures to each other. There is no scheduling order from the Court setting any
10 deadlines relative to the Lahrs' newly filed Third-Party Complaint. Defendants respectfully request
11 a 75-day extension of time (i.e., to **May 28, 2019**), to file their Response to the MPSJ. This is
12 Defendants' first request for an extension of time based upon the reasons set forth in this *ex parte*
13 motion. This *ex parte* motion is based upon the pleadings and papers on file in this action, the
14 following Memorandum of Points and Authorities, and the concurrently-filed declaration of Sophia
15 S. Lau.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTUAL BACKGROUND

18 Plaintiff Bank of New York Mellon (“BONY”) filed its Complaint in this matter naming
19 the Lahrs as defendants on April 11, 2017. [ECF No. 1]. The Lahrs filed a motion to dismiss
20 BONY’s Complaint on November 22, 2017. [ECF No. 52]. The Lahrs filed an Answer to BONY’s
21 Complaint on July 16, 2018. [ECF No. 75]. Over one year after first appearing in this action, the
22 Lahrs obtained the Court’s permission to file a “Supplemental” Third-Party Complaint against
23 Commonwealth and Lawyers Title. [ECF No. 113]. The Lahrs then filed their Third-Party
24 Complaint against Commonwealth and Lawyers Title on December 17, 2018. [ECF No. 114]. The
25 Lahrs’ Third-Party Complaint asserts claims for declaratory relief, breach of contract and breach of
26 the implied covenant of good faith and fair dealing (i.e., “bad faith”) relating to the Lahrs’
27 acquisition of a policy of title insurance. [ECF No. 114].

Commonwealth and Lawyers Title filed an Answer to the Lahrs' Third-Party Complaint on

1 **February 1, 2019.** [ECF No. 122]. On **February 21, 2019**, just twenty days after Defendants filed
 2 their Answer, the Lahrs filed their Motion for Partial Summary Judgment (“MPSJ”) against
 3 Defendants seeking a declaration that they have title insurance coverage for the matters at issue in
 4 this litigation. [ECF No. 127]. Among other things, the Lahrs’ MPSJ includes declarations from
 5 Alan Lahrs and a declaration from an expert retained by the Lahrs concerning the results of a
 6 forensic examination he claims to have conducted of the Lahrs’ computers. [ECF Nos. 127-129].
 7 The Lahrs’ MPSJ involves several key factual disputes concerning, among other things: the Lahrs’
 8 knowledge of a critical “Exception” to coverage in the subject title insurance policy; the Lahrs’
 9 receipt and understanding of documents that were provided to the Lahrs by Lawyers Title in
 10 connection with the issuance of the policy that identify the Exception and advise the Lahrs that it
 11 would remain in the policy; whether the Lahrs received the final and correct title insurance policy.
 12 In light of these issues, it is imperative that Defendants be given an opportunity to depose the Lahrs
 13 and conduct other relevant discovery on the issues presented in the Lahrs’ MPSJ. (Declaration of
 14 Sophia Lau (“Lau Decl.”) at ¶ 2.)

15 As of the date of the filing of this ex parte motion, the parties have not yet held a conference
 16 of counsel or conferred regarding a discovery plan and scheduling order pursuant to Federal Rule
 17 of Civil Procedure 26(f). (*Id.* at ¶ 3.) There is thus no Scheduling Order from the Court pursuant
 18 to Federal Rule of Civil Procedure 16(b) governing the Lahrs’ Supplemental Third-Party
 19 Complaint.¹ Nor have Defendants or the Lahrs served their initial disclosures relative to the Lahrs’
 20 Supplemental Third-Party Complaint. (*Id.* at ¶ 4.) Defendants have not yet had an opportunity to
 21 obtain discovery from the Lahrs or notice the depositions of the Lahrs and the technology specialist
 22 (whose declaration, along with that of Alan Lahrs) was submitted in support of the Lahrs’ MPSJ.
 23 (*Id.* at ¶ 5.) Defendants are in the process of drafting their initial discovery to the Lahrs; however,
 24 given that the Lahrs would have 30 days in which to provide responses, the need to conduct follow-
 25 up discovery from the Lahrs and third parties, and to complete the appropriate depositions, there is
 26

27 ¹ The Court previously entered a Scheduling Order in this matter on July 21, 2017. [ECF
 28 No. 37] However, all of the dates and deadlines set forth in that Scheduling Order passed before
 Commonwealth and Lawyers title were added to this litigation.

1 no way to conduct the required discovery and prepare and file a Response to the Lahrs' Motion for
 2 Partial Summary Judgment by **March 14, 2019**. (*Id.* at ¶ 6.) Under the circumstances, a reasonable
 3 continuance of the deadline for Defendants to file their Response is warranted and appropriate.

4 In light of the foregoing, on Monday, February 25, 2019, Defendants requested that the
 5 Lahrs stipulate to continue the due date for filing Defendants' Response to the Lahrs' MPSJ for a
 6 period of at least 75 days to afford Defendants an opportunity to conduct discovery and prepare a
 7 meaningful Response. (*Id.* at ¶ 7 and Ex. A thereto.) On Tuesday, February 26, 2019, the Lahrs'
 8 counsel advised that he would not grant Defendants an extension to file the Response and informed
 9 Defendants they could "run to the judge as you have said you would do here." (*Id.* at ¶ 8, Ex. A.)
 10 This e-mail exchange precipitated the filing on the instant ex parte motion.

11 **II. GOOD CAUSE EXISTS TO GRANT THIS EX PARTE MOTION**

12 Federal Rule of Civil Procedure 6(b)(1)(A) provides "[w]hen an act may or must be done
 13 within a specified time, the court may, for good cause, extend the time...if a request is made, before
 14 the original time or its extension expires." "Good cause" is a non-rigorous standard that has been
 15 construed broadly across procedural and statutory contexts. *See Ahanchian v. Xenon Pictures, Inc.*,
 16 624 F. 3d 1253, 1258-59 (9th Cir. 2010) (Fed. R. Civ. P. 6(b)(1) is to be liberally construed to
 17 effectuate the general purpose of seeing that cases are tried on the merits); *see also Dayton Valley*
 18 *Investors, LLC v. Union Pac. R.R. Co.*, 664 F. Supp. 3d 1174, 1179 (D. Nev. 2009) (finding good
 19 cause for allowing a late filed opposition to a motion for summary judgment under Fed. R. Civ. P.
 20 6(b)(1) in light of the Ninth Circuit's preference for adjudicating cases on the merits).
 21 Consequently, requests for extensions of time made before the applicable deadline has passed
 22 should "normally ... be granted in the absence of bad faith on the part of the party seeking relief or
 23 prejudice to the adverse party." *California Trout v. F.E.R.C.*, 572 F.3d 1003, 1027 (9th Cir. 2009)
 24 (citing 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1154 (3d
 25 ed. 1998)).

26 Good cause exists to grant Defendants' requested extension of time to file a Response to the
 27 Lahrs' MPSJ because Defendants only recently appeared in this case (on **February 1, 2019**) and
 the Lahrs filed their MPSJ just twenty days later, on **February 21, 2019**. The Lahrs appeared in

1 this action in 2017 and have actively litigated this case over a year prior to Defendants' entry into
 2 the litigation. As evidenced by the Lahrs' MPSJ and supporting exhibits and declarations, the Lahrs
 3 have had the opportunity to conduct discovery, including expert discovery, and gather evidence in
 4 support of their motion. By contrast, Defendants were in the process of reviewing the pleadings
 5 filed in this action, their clients' documents, and preparing discovery to propound on the Lahrs
 6 when they were served with the MPSJ. Without the ability to conduct discovery on the Lahrs'
 7 claims against Defendants and the arguments and evidence advanced in their MPSJ, including the
 8 opportunity to depose the Lahrs and their expert, Defendants will not be able to meaningfully
 9 oppose and respond to the Lahrs' MPSJ. For example, Defendants will not have the ability to rebut
 10 the Lahrs' primary contention in their motion that they never received the operative policy at issue
 11 in their Supplemental Third-Party Complaint. An extension of time for Defendants to respond to
 12 the Lahrs' motion is therefore necessary to enable Defendants to obtain the evidence in support of
 13 their defense and refute the Lahrs' claims against them. Defendants' requested extension would
 14 ensure the parties' case is tried on the merits in accordance with the general purpose of Fed. R. Civ.
 15 P. 6(b)(1). *See Program Engineering, Inc. v. Triangle Publications, Inc.*, 634 F.2d 1188, 1193 (9th
 16 Cir. 1980) (generally where a party has had no previous opportunity to develop evidence and the
 17 evidence is crucial to material issues in the case, discovery should be allowed before the trial court
 18 rules on a motion for summary judgment).

19 Further, Defendants do not seek this continuance for any improper purpose and there is no
 20 prejudice that will result to the Lahrs should the Court grant the requested extension as they only
 21 recently filed their Supplemental Third-Party Complaint. Defendants reached out to the Lahrs'
 22 counsel and sought a stipulation for a reasonable extension of time to file the Response promptly
 23 after receiving the Lahrs' MPSJ. (Lau Decl. at ¶¶ 7-8, Ex. A.) In requesting the stipulation,
 24 Defendants explained the reasons necessitating the extension in light of Defendants very recent
 25 entry into the ongoing litigation. (*Id.*) However, Plaintiffs refused Defendants' request to stipulate
 26 to an extension because, in Plaintiffs' view, Defendants do not need to conduct any discovery to
 27 respond to Plaintiffs' motion. (*Id.*) As detailed above, this is not true as motions for summary
 judgment are evidentiary in nature and the central issues at issue in the Lahrs' MPSJ involve

1 disputed factual issues. In addition, no prejudice will occur to the Lahrs if the Court grants the
 2 Defendants' requested extension. Defendants seek an extension that will not cause any unnecessary
 3 or material delay to this litigation nor will the extension cause any party to run afoul of any deadlines
 4 or scheduling orders currently set in this case. In reality, it is Defendants who will be prejudiced
 5 by having to respond to the Lahrs' motion by the present deadline without the ability to present
 6 facts essential to justify its opposition.

7 The relief Defendants seek may be sought *ex parte*. As noted above, when Defendants
 8 asked the Lahrs to stipulate to an appropriate extension of its responsive deadline, they refused.
 9 Even if Defendants had brought a regularly-noticed motion for an extension on February 26, 2019,
 10 Plaintiffs would then have 14 days to file a response to the motion, and Defendants would have five
 11 days to file a reply in support of the motion on March 18, 2019. *See* Local Rule 7-2(b). Therefore,
 12 the motion would not be fully briefed or ruled on until after Defendants' deadline to respond to
 13 Plaintiffs' MPSJ.

14 Accordingly, taking into account the foregoing, an additional 75-days (or until May 28,
 15 2019) for Defendants to respond to the Lahrs MPSJ is reasonable. This extension will permit
 16 Defendants to propound written discovery, receive and evaluate Plaintiffs' responses to written
 17 discovery 30 days later, take depositions, receive and evaluate the transcripts of those depositions
 18 and, following receipt of evidence and testimony in support of their defense position, sufficiently
 19 address and rebut the multiple substantive arguments raised in Plaintiffs' dispositive motion for
 20 partial summary judgment. Defendants have not previously requested an extension of time to
 21 respond to Plaintiffs' motion for partial summary judgment from the Court. (Lau Decl. at ¶ 9.)

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1 **III. CONCLUSION**

2 Defendants respectfully request that the Court grant their *ex parte* motion and issue an order
3 extending Defendants time to respond to Plaintiffs' motion for partial summary judgment by 75-
4 days to May 28, 2019.

5 Respectfully submitted,

6 EARLY SULLIVAN WRIGHT
7 GIZER & MCRAE LLP

8 Dated: March 1, 2019

9 By: /s/ Sophia S. Lau

10 Sophia S. Lau, Esq.

11 Nevada Bar No. 12216
12 601 South Seventh Street, 2nd Floor
13 Las Vegas, Nevada 89101

14 Attorneys for Third Party Defendants

15 COMMONWEALTH LAND TITLE INSURANCE
16 COMPANY AND LAWYERS TITLE OF NEVADA,
17 INC.

18 **ORDER**

19 **IT IS SO ORDERED:**

20 Third-party defendants Commonwealth and Lawyers
21 Title shall have until May 28, 2019 to file their
22 Response to the motion for partial summary judgment
23 filed by third-party plaintiffs Alan and Theresa Lahrs
24 [ECF No. 127].

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27 UNITED STATES DISTRICT JUDGE

28 DATED: March 8, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Electronic Service List for this Case.

<p>Daren T. Brenner, Esq. Rex Garner, Esq. AKERMAN, LLP 1160 Town Center Drive, Suite 330 Las Vegas, Nevada 89144</p> <p><i>Attorney for Plaintiff</i></p>	<p>James W. Pengilly, Esq. Elizabeth B. Lowell, Esq. Ty M. Maynarich, Esq. PENGILLY LAW FIRM 1995 Village Center Circle, Suite 190 Las Vegas, Nevada 89134</p> <p><i>Attorneys for Christopher Communities at Southern Highland Gold Club HOA</i></p>
<p>Robert E. Atkinson, Esq. ATKINSON LAW ASSOCIATES, LTD. 8965 South Eastern Ave., Suite 260 Las Vegas, Nevada 89123</p> <p><i>Attorneys for Kupperlin Law Group, LLC</i></p>	<p>John T. Steffen, Esq. Todd W. Prall HUTCHINSON & STEFFEN, PLLC 10080 W. Alta Drive, Suite 200 Las Vegas, Nevada 89145</p> <p><i>Attorneys for Def. Lahrs as Trustee of Lahrs Family Trust</i></p>
<p>Jeffrey R. Albregts, Esq. JEFFREY R. ALBREGTS, LLC 701 Shadow lane, Suite 150 Las Vegas, Nevada 89106</p> <p><i>Attorneys for Third Party Complainants Alan Lahrs and Theresa Lahrs as Trustees of the Lahrs Family Trust</i></p>	

/s/ *D'Metria Bolden*

D'Metria Bolden
An employee of EARLY SULLIVAN
WRIGHT GIZER & McRae LLP

1 Sophia S. Lau, Esq., Nevada Bar No. 13365
2 *slau@earlysullivan.com*
3 EARLY SULLIVAN WRIGHT
4 GIZER & MCRAE LLP
5 601 South Seventh Street, 2nd Floor
6 Las Vegas, NV 89101
7 Telephone: (702) 331-7593
8 Facsimile: (702) 331-1652

9
10 Attorneys for Third Party Defendants
11 COMMONWEALTH LAND TITLE INSURANCE
12 COMPANY AND LAWYERS TITLE OF NEVADA, INC.
13
14

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 THE BANK OF NEW YORK MELLON
18 FKA THE BANK OF NEW YORK, AS
19 TRUSTEE FOR THE
20 CERTIFICATEHOLDERS OF CWALT,
21 INC., ALTERNATIVE LOAN TRUST
22 2005-56, MORTGAGE PASSTHROUGH
23 CERTIFICATES, SERIES 2005-56,

24 Plaintiff,

25 vs.

26 CHRISTOPHER COMMUNITIES AT
27 SOUTHERN HIGHLANDS GOLF CLUB
28 HOMEOWNERS ASSOCIATION;
KUPPERLIN LAW GROUP, LLC; FIRST
100, LLC; ALAN LAHRS AND
THERESA LAHRS AS TRUSTEES OF
THE LAHRS FAMILY TRUST; DOB
INDIVIDUALS I-X, inclusive; and ROE
CORPORATIONS -X, inclusive,

Defendants.

Case No.: 2:17-cv-01033-JCM-GWF

**DECLARATION OF SOPHIA S. LAU
IN SUPPORT OF THIRD-PARTY
DEFENDANTS COMMONWEALTH
LAND TITLE INSURANCE COMPANY
AND LAWYERS TITLE OF NEVADA,
INC.'S *EX PARTE* MOTION FOR AN
EXTENSION OF TIME TO RESPOND
TO THIRD-PARTY PLAINTIFFS
ALAN AND THERESA LAHRS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

CHRISTOPHER COMMUNITIES AT
SOUTHERN HIGHLANDS GOLF CLUB
HOMEOWNERS ASSOCIATION,

Cross-Complainant,

vs.

KUPPERLIN LAW GROUP, LLC,

Cross-Defendant.

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3 CHRISTOPHER COMMUNITIES AT
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5 HOMEOWNERS ASSOCIATION,

6 Cross-Complainant,

7 vs.

8 KUPPERLIN LAW GROUP, LLC,

9 Cross-Defendants.

10 KUPPERLIN LAW GROUP, LLC,

11 Counter-claimant,

12 vs.

13 NATALIE L. WINSLOW, an individual,

14 Counter-defendant.

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16 ALAN LAHRS AND THERESA LAHRS
17 AS TRUSTEES OF THE LAHRS FAMILY
18 TRUST, a trust established under the laws
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21 CHRISTOPHER COMMUNITIES AT
22 SOUTHERN HIGHLANDS GOLF CLUB
23 HOMEOWNERS ASSOCIATION, a
24 homeowner's association governed by the
laws of the State of Nevada; KUPPERLIN
25 LAW GROUP, LLC, a Nevada limited
liability company; FIRST 100, LLC, a
26 Nevada limited liability company,

27 Cross-Defendants.

28 ALAN LAHRS AND THERESA LAHRS
AS TRUSTEES OF THE LAHRS FAMILY
TRUST, a trust established under the laws
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Third-Party Plaintiff,

VS.

JAY BLOOM, an individual, DOE INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Third-Party Defendants.

ALAN LAHRS and THERESA LAHRS,
individually and as Trustees for their Family
Trust.

Third-Party Plaintiffs,

vs.

COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Foreign Corporation previously registered with the Nevada Secretary of State's Office; LAWYERS TITLE OF NEVADA, Inc., a Nevada Domestic Corporation; DOE individuals I-V; and ROE CORPORATIONS I-V,

Supplemental Third-Party Defendants.

DECLARATION OF SOPHIA S. LAU

I, Sophia S. Lau, declare and state as follows:

1. I am an attorney at law duly admitted to practice before the courts of the State of Nevada and am a partner in the law firm of Early Sullivan Wright Gizer & McRae LLP, counsel for third-party defendants (“Commonwealth”) and Lawyers Title of Nevada, Inc. (“Lawyers Title”) (collectively “Defendants”), in the above-entitled action. I make this declaration in support of the concurrently-filed *ex parte* motion for an extension of time to respond to the Motion for Partial Summary Judgment (“MPSJ”) filed by third-party plaintiffs Alan and Theresa Lahrs’ (collectively,

1 "Plaintiffs" or the "Lahrs") on February 21, 2019. I have personal knowledge of the matters set
 2 forth below and if called as a witness could testify competently thereto.

3 2. Defendants were only recently added as third-party defendants in this litigation by
 4 way of the Supplemental Third-Party Complaint filed by the Lahrs on December 17, 2018. [ECF
 5 No. 114]. Commonwealth and Lawyers Title filed an Answer to the Lahrs' Third-Party Complaint
 6 on **February 1, 2019**. [ECF No. 122]. On **February 21, 2019**, just twenty days after Defendants
 7 filed their Answer, the Lahrs filed their Motion for Partial Summary Judgment ("MPSJ") against
 8 Defendants seeking a declaration that they have title insurance coverage for the matters at issue in
 9 this litigation. [ECF No. 127]. The Response to the MPSJ is currently due on **March 14, 2019**.
 10 Among other things, the Lahrs' MPSJ includes declarations from Alan Lahrs and a declaration from
 11 an expert retained on behalf of the Lahrs concerning the results of a forensic examination he
 12 conducted of Alan Lahrs computer. [ECF Nos. 127-129]. The Lahrs' MPSJ involves several key
 13 factual disputes concerning, among other things: the Lahrs' knowledge of a critical "Exception" to
 14 coverage in the subject title insurance policy; the Lahrs' receipt and understanding of documents
 15 that were provided to the Lahrs by Lawyers Title in connection with the issuance of the policy that
 16 identify the Exception and advise the Lahrs that it would remain in the policy; whether the Lahrs
 17 received the final and correct title insurance policy. In light of these issues, it is imperative that
 18 Defendants be given an opportunity to depose the Lahrs and conduct other relevant discovery on
 19 the issues presented in the Lahrs' MPSJ.

20 3. As of the date of the filing of Defendants' *ex parte* motion, the parties have not yet
 21 held a conference of counsel or conferred regarding a discovery plan and scheduling order pursuant
 22 to Federal Rule of Civil Procedure 26(f).

23 4. The parties have also not received a scheduling order from the Court pursuant to
 24 Federal Rule of Civil Procedure 16(b) relative to the new pleading (the Third-Party Complaint) filed
 25 by the Lahrs, nor have the Lahrs or Defendants served their initial disclosures in connection with
 26 the Third-Party Complaint.

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 28 //

5. Defendants have not yet had an opportunity to propound discovery to the Lahrs or notice the depositions of the Lahrs and the expert they rely on in support of their motion for partial summary judgment.

6. Defendants are in the process of drafting their initial discovery to the Lahrs; however, given that the Lahrs would have 30 days in which to provide responses, the need to conduct follow-up discovery from the Lahrs and third parties, and to complete the appropriate depositions, there is no way to conduct the required discovery and prepare and file a Response to the Lahrs' motion for partial summary judgment by March 14, 2019.

7. After receiving the Lahrs' motion for partial summary judgment, on February 25, 2019 our office requested that the Lahrs' counsel stipulate to continue the due date for Defendants' Response to the Lahrs MPSJ for a period of at least 75-days to afford Defendants an opportunity to conduct discovery and meaningfully prepare the Response. A true and correct copy of the email request is attached hereto as **Exhibit A**.

8. On February 26, 2019, the Lahrs' counsel responded that he would not grant Defendants the requested extension and informed Defendants they could "run to the judge as you have said you would do here." A true and correct copy of the February 26, 2019 email response from the Lahrs' counsel is included in the e-mails attached hereto as **Exhibit A**.

9. Defendants have not previously requested an extension of time to respond to Plaintiffs' motion for partial summary judgment from the Court.

I declare under penalty of perjury under the law of the United States of America and the State of Nevada that the foregoing is true and correct.

EARLY SULLIVAN WRIGHT GIZER & McRAE LLP

Dated: March 1, 2019

By: /s/ Sophia S. Lau
Sophia S. Lau, Esq.
Nevada Bar No. 12216
601 South Seventh Street, 2nd Floor
Las Vegas, Nevada 89101
Attorneys for Third Party Defendants
COMMONWEALTH LAND TITLE INSURANCE
COMPANY AND LAWYERS TITLE OF NEVADA,
INC

Exhibit A

Christopher I. Ritter

From: Jeff Albregts <jalbregts@albregtslaw.com>
Sent: Tuesday, February 26, 2019 1:40 PM
To: Christopher I. Ritter
Cc: Sophia Lau
Subject: RE: Alan Lahrs, et al. v. Commonweal Land Title Ins. Co., et al. Case No. 2:17-cv-01033-JCM-GWF

I can't agree to as much Chris as this issue causes my clients tremendous stress, i.e., this is their home in which they reside, and Commonwealth has been dragging its feet on this issue since early 2017 when we tendered their ALTA title policy to it for defense and coverage. Indeed, we tendered on May 18, 2017, and did not receive a coverage explanation, i.e., 'reservation of rights' letter, until October 27, 2017, sans your version of the policy you claim applies here. We finally got that fabricated policy the next month by email from Emily Heidbreder, a version never received by my clients, a 'fact' we have also confirmed forensically now, too, as you know. Moreover, defense counsel didn't even enter his appearance on their behalf in this case until 1/5/18, after discovery had already expired, and then failed to even disclose these policies as required by law, meaning the rules (FRCP 26). You can only imagine what my clients think here.

Indeed, we also have asked for proof from your side showing that my clients received the policy you claim applies here, as well as to share our expert's report showing that they did not, and Commonwealth declined both of these mitigation offers. In short Commonwealth is probably in 'bad faith' here but for its continued tender of a defense on their behalf to this case. If it is not going to withdraw that defense as it has threatened to do, then we may be able to consider your request here—let me know—or you can always run to the judge as you have said you would do here.

Finally, and on that note, what discovery do you need when Commonwealth has yet to even make a *prima-facie* showing that the policy it asserts here was ever delivered to the Lahrs, by mail, email or otherwise? Your client is still fishing, fabricating or both here as its mistake—or that of Lawyers Title of Nevada—is readily evident from the exhibits attached to our motion, i.e., they never preserved 'Exception to Coverage' No. 48 in the ALTA Policy they delivered to my clients (that Policy containing only Nos. 1-47).

Let me know if you think we can find some middle ground here short of court intervention, but I can't agree to this 'professional courtesy' request over the objection of my client for the reasons above, notwithstanding NRPC 3.2(b), at least not at this time and under these conditions.

Thx Chris.

Jeffrey R. Albregts, Esq.,
JEFFREY R. ALBREGTS, LLC
701 Shadow Lane, Suite 150
Las Vegas, NV 89106
Tele: (702) 483-5026 Fax: (702) 485-2343

From: Christopher I. Ritter <critter@earlysullivan.com>
Sent: Monday, February 25, 2019 4:04 PM
To: Jeff Albregts <jalbregts@albregtslaw.com>
Cc: Sophia Lau <slau@earlysullivan.com>
Subject: Alan Lahrs, et al. v. Commonweal Land Title Ins. Co., et al. Case No. 2:17-cv-01033-JCM-GWF

Jeffrey,

We have received the Lahrs' Motion for Partial Summary Judgment. As you know, Commonwealth was only recently added to this litigation and we filed an Answer to the Third Party Complaint just a few weeks ago. We have not yet had an opportunity to conduct discovery. Our Response to the Motion is presently due March 14, 2019. Please let me know if you will stipulate to continue the due date for our Response for a period of at least 75 days. If you will not stipulate, we intend to seek appropriate relief from the Court.

Please let me know as soon as possible.

Thank you,
Chris Ritter



CHRISTOPHER I. RITTER | PARTNER
Early Sullivan Wright Gizer & McRae LLP
323.301.4660 Main
323.761.7906 Direct
323.301.4676 Fax

6420 Wilshire Blvd., 17th Floor, Los Angeles, CA 90048
critter@earlysullivan.com

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